

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

77-1169

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

UNITED STATES OF AMERICA, :

Appellee, :

- v -

: Docket No. 77-1169

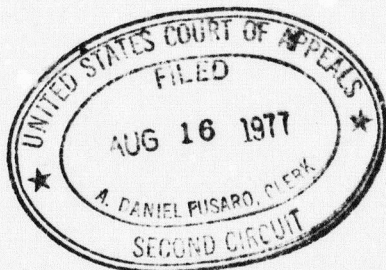
DORIS ELAINE MILLER, :

Appellant. :

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REPLY BRIEF FOR APPELLANT DORIS ELAINE MILLER



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REPLY BRIEF FOR APPELLANT DORIS ELAINE MILLER

POINT I

THE GOVERNMENT FAILED TO PROVE
THAT MILLER VIOLATED 18 U.S.C.
2113 (c), EITHER AS A PRINCIPAL
OR AN AIDER AND ABETTOR

The government has left unanswered the basic grounds
for reversal.

First, on the sufficiency of the evidence (Miller Brief
"DBr" 6) whether Miller did or did not aid and abet the bank
robbery is not an issue on this appeal (Government Brief "GBr" 13).
The jury resolved that issue against the Government, and it may
not be retrieved in this Court. The two questions were (a) did
Miller aid and abet a principal in receiving the proceeds, and

(b) if not, was she proven by competent evidence to be a principal herself. We showed (DBr 7-8) and the Government by its silence apparently agrees, that she was not an aider and abettor on the Section (c) charge because the Government had no principal on that charge. And we showed further that she could not be held for allegedly receiving \$1,000 because the only evidence on that was hearsay, another point confirmed by the Government's silence.*

That should end this case as to her.

Second, the Government offers no response to our Point II (DBr 8) concerning the Assistant's improper use on summation of Hodges' and Owens' agreements with the Government confirming the propriety of a reversal on that ground as well.

Finally, we shall not argue with the Government about whether the district court's intervention was "neutral" or designed "merely to clarify the record" (GBr 17). The fact is that the intervention was continuous and repeated (DBr 11-12); that it came with a statement from the court in one instance that Owens was telling the truth (GBr 16-17); and when coupled with the court's hostility and impatience with defendants' counsel improperly slanted the witnesses' credibility toward the Government.

* GBr 6 asserts that Owens used part of the robbery proceeds for Miller to shop. GBr 13 properly omits this from the statement of evidence which would prove guilt of a section (c) violation because there was no proof that Miller knew the origin of the funds. In addition the testimony was vague and uncertain and did not even pinpoint the alleged amounts.

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Of Counsel

Respectfully Submitted,

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Doris Elaine Miller

Certificate of Service

United States v. Doris Elaine Miller, No. 77-1169

I certify that on August 12, 1977 I mailed a copy of the Reply Brief for Appellant Doris Elaine Miller to David Trager, Esq., United States Attorney, 225 Cadman Plaza East, Brooklyn , New York 11201.

Donald E. Nawi

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